DOCKET FILE COPY ORIGINAL

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Second Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana	)	CC Docket No. 98-121

RECEIVED

AUG - 4 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

APPENDIX TO COMMENTS OF AT&T CORP. IN OPPOSITION TO BELLSOUTH'S SECOND SECTION 271 APPLICATION FOR LOUISIANA

VOLUME VI

Affidavit of Robert V. Falcone
Attachments 31 - 45

Filed August 4, 1998

APPENDIX TO COMMENTS OF AT&T CORP.
IN OPPOSITION TO BELLSOUTH'S SECOND
SECTION 271 APPLICATION FOR LOUISIANA

CC Docket No. 98-121

TAB	AFFIANT	SUBJECT(S) COVERED	RELEVANT STATUTORY PROVISIONS
A	Michelle Augier	AT&T Market Entry	§ 271(c)(1)(A), (c)(2)(B), (d)(3)
B	*William J. Baumol	Public Interest	§ 271(d)(3)(C)
C	*Robert H. Bork	Public Interest	§ 271(d)(3)(C)
D	Jay M. Bradbury	Operations Support Systems, Directory Listing, Number Portability, Resale	§ 271(c)(2)(B)(ii), (vi), (viii), (xi), and (xiv)
E	Robert V. Falcone	Unbundled Network Elements: Combinations	§ 271(c)(2)(B)(i), (ii), (v) and (vi)
F	Gregory R. Follensbee	Unbundled Network Elements: Pricing	§ 271(c)(2)(B)(i), (ii)
G	John M. Hamman	Unbundled Switching, Intellectual Property, Reciprocal Compensation	§ 271(c)(2)(B)(ii), (vi) and (xiii)
H	Donna Hassebrock	ADL, Interconnection, Operations Support Systems, Directory Listings, Number Portability	§ 271(c)(2)(B)(i), (ii), (viii) and (xi)
I	R. Glenn Hubbard and William H. Lehr	Public Interest	§ 271(d)(3)(C)
J	Patricia A. McFarland	Section 272 Compliance	§ 271(d)(3)(B)
K	Philip I. Miller and Dean A. Gropper	Public Interest - ILEC Ability to Harm Competition	§ 271(d)(3)(C)
L	Sharon Norris	Louisiana Public Service Commission Proceedings on Operations Support Systems	§ 271(c)(2)(B)(ii)

TAB	AFFIANT	SUBJECT(S) COVERED	RELEVANT STATUTORY PROVISIONS
M	C. Michael Pfau and Katherine M. Dailey	Performance Measurements	§ 271(c)(2)(B)(i), (ii) and (xiv)
N	Jordan Roderick	PCS	§ 271(c)(1)(A), (d)(3)

* Affidavits marked with this are as originally filed in CC Docket No. 97-231

MISCELLANEOUS APPENDIX

TAB	DESCRIPTION
O	Order, AT&T Communications of the Southern States, Inc. v. BellSouth Telecommunications, Inc., No. 5:97-CV-405-BR (Eastern District of North Carolina, Western Division May 22, 1998)
P	Recommended Decision, Pennsylvania Public Utility Commission, Petition of Bell Atlantic - Pennsylvania, Inc. For a Determination of Whether the Provision of Business Telecommunications Services is Competitive Under Chapter 30 of the Public Utility Code, Docket No. P-00971307 (July 24, 1998)

ATTACHMENT 31

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter of the application and complaint of **MCIMETRO ACCESS TRANSMISSION SERVICES, INC.**, against **AMERITECH MICHIGAN** requesting non-discriminatory, efficient and reasonable use of unbundled loops using GR303 capability.	))))))	Case No. U-11583

At the June 3, 1998 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. John G. Strand, Chairman
Hon. John C. Shea, Commissioner
Hon. David A. Svanda, Commissioner

OPINION AND ORDER

I.

HISTORY OF PROCEEDINGS

On November 6, 1997, MCImetro Access Transmission Services, Inc., (MCI) filed an application and complaint (complaint) against Ameritech Michigan pursuant to the provisions of 1991 PA 179, as amended by 1995 PA 216, MCL 484.2101 et seq.; MSA 22.1469(101) et seq., (the MTA) requesting non-discriminatory, efficient, and reasonable use of unbundled loops using Bellcore's General Requirements-303 (GR303) capability.[1]

---

[1]According to MCI, GR303 capable equipment will permit the connection of unbundled loops terminating in Ameritech Michigan's end offices to MCI's switching equipment in a manner that

On December 11, 1997, Ameritech Michigan filed an answer and affirmative defenses to the complaint.

On December 15, 1997, Administrative Law Judge Theodora M. Mace (ALJ) conducted a prehearing conference that was attended by MCI and Ameritech Michigan.

On February 6, 1998, the ALJ conducted an evidentiary hearing. Two witnesses testified and 16 exhibits were received into evidence. Thereafter, MCI and Ameritech Michigan both submitted briefs and reply briefs to the ALJ.

On April 10, 1998, the ALJ issued a Proposal for Decision (PFD) in which she recommended that the Commission grant the relief sought by MCI in its complaint.

On April 27, 1998, Ameritech Michigan filed its exceptions to the PFD. On May 8, 1998, MCI filed replies to exceptions.

II.

BACKGROUND INFORMATION

In orders issued on December 20, 1996 and June 5 and July 31, 1997 in Case No. U-11168,[2] the Commission approved an interconnection agreement between Ameritech Michigan and MCI. Among other things, the interconnection agreement provided that either party could make a bona fide request pursuant to Article 2.2 and Schedule 2.2 for certain services, including features, capabilities, functionalities, network elements, or combinations that were not otherwise specified in the interconnection agreement.

---

eliminates the need for costly collocated facilities and reduces transport costs.

[2]Commissioner Shea dissented from these orders.

On July 18, 1997, MCI sent an eight-page facsimile transmission to Ameritech Michigan entitled "MCI Bona Fide Request For Switched Combination Of Unbundled Elements." Specifically, MCI stated that it would like to establish a process to lease GR303 capable remote digital terminals from Ameritech Michigan. According to MCI's proposal, GR303 capable remote digital terminals would be located in an undetermined number of Ameritech Michigan's central offices. MCI desires to have Ameritech Michigan place this equipment, specifically SLC 2000 or equivalent equipment[3], in Ameritech Michigan's central offices to function as digital loop carriers to facilitate MCI's service to the local telecommunications marketplace. It is MCI's plan to have unbundled loops connected to the GR303 compatible equipment to take advantage of the capability of such equipment to concentrate traffic.[4] By so doing, MCI expects to realize significant savings by leasing considerably fewer circuits of transport between Ameritech Michigan's central offices and MCI's switches and by avoiding the additional costs associated with collocation.

On July 23, 1997, Ameritech Michigan informed MCI that further clarification of the bona fide request was necessary before an appropriate response could be prepared. Although acknowledging that MCI's request appeared to be technically feasible for the provision of at least some, if not all, of the GR303 capabilities, Ameritech Michigan indicated that it did not have

---

[3]The SLC 2000 is manufactured by Lucent Technologies. Ameritech Michigan does not currently utilize Lucent SLC 2000 equipment in its network. Rather, Ameritech Michigan currently deploys Litespan 2000 equipment, which is manufactured by DSC Communications.

[4]GR303 capable digital loop carriers are able to concentrate unbundled loops for transport in accordance with varying ratios that can be established based on customer usage and calling patterns. For example, if set at a 6:1 ratio, the concentration capability would make it possible for 6 unbundled loops to function through use of only 1 DS-0 circuit of transport instead of 6 such circuits.

sufficient information to determine if such equipment would meet MCI's specific service requirements or to determine a price for the equipment. Accordingly, Ameritech Michigan requested that MCI provide answers to six specific questions.

On August 18, 1997, MCI sent its response to Ameritech Michigan's July 23, 1997 message. MCI's response contained the six answers requested by Ameritech Michigan and included a diagram of the proposed network configuration for the GR303 capable equipment.

On August 21, 1997, Ameritech Michigan responded to MCI's August 18, 1997 message. In so doing, Ameritech Michigan stated that uncertainties still existed regarding the intent of MCI's bona fide request. Specifically, Ameritech Michigan asked MCI to confirm whether MCI's request was for Ameritech Michigan to place non-standard equipment in Ameritech Michigan's central offices and to have Ameritech Michigan connect such equipment on MCI's behalf to both unbundled loops and unbundled dedicated transport at an unspecified concentration level.

Before MCI could respond to Ameritech Michigan's August 21, 1997 message, Ameritech Michigan sent a follow-up letter dated September 5, 1997 indicating that Ameritech Michigan would not process MCI's bona fide request. Citing the interconnection agreement between the companies, the Federal Communications Commission's (FCC) administrative rules that were adopted pursuant to the FCC's First Report and Order,[5] the recent decision of the Eighth Circuit Court of Appeals in Iowa Utilities Board v FCC, 120 F3d 753 (CA 8, 1997), cert gtd ______

[5]Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98 (August 8, 1996).

US _____ (1998), and the federal Telecommunications Act of 1996 (the FTA),[6] Ameritech Michigan insisted that it was not required to provide MCI with access to GR303 compatible equipment because such equipment was not currently installed in Ameritech Michigan's network. Ameritech Michigan also stressed that because it does not currently combine the loop and transport elements in the manner requested by MCI, it would be MCI's responsibility to combine these elements.

III.

POSITIONS OF THE PARTIES

MCI

Christopher Gushue, a contract specialist employed by MCI, testified that, in order for MCI to operate as a facilities-based, competitive provider of basic local exchange service to residential and small business customers in Michigan, it is necessary for MCI to connect unbundled loops leased from Ameritech Michigan to MCI's network. Mr. Gushue stated that one way of accomplishing that task would be for MCI to collocate facilities at every Ameritech Michigan end-office where MCI leases unbundled loops.[7] However, Mr. Gushue stated that collocation can be extremely expensive and time consuming to implement. Given these considerations, he did not believe that collocation was an efficient or cost-effective means of connecting unbundled

---

[6]Public Law No. 104-104, 110 Stat. 56 (codified in scattered sections of Title 47, United States Code).

[7]This scenario would require Ameritech Michigan to cross connect the unbundled loops to MCI's collocation cage, with MCI performing all necessary functions within the cage, including concentration, and then leasing transport circuits from the collocation cage to MCI's network.

loops to MCI's network. Moreover, he explained that there is no technical reason for MCI to use collocation in order to connect unbundled loops to its network.

Mr. Gushue testified that the requested network capability in MCI's bona fide request would permit connecting unbundled loops to MCI's network without having to collocate any facilities at Ameritech Michigan's end-offices. According to Mr. Gushue, MCI would lease unbundled loops from Ameritech Michigan that would be connected to the GR303 capable equipment for concentration. In turn, MCI would lease dedicated transport between the GR303 capable equipment and its own network. Mr. Gushue maintained that, from a network perspective, use of GR303 capability as requested by MCI in the bona fide request would make connection of unbundled loops to MCI's network very efficient because it would eliminate the need for collocation and would maximize the use of transport, thereby minimizing the cost of transporting the loops to MCI's network. Further, he insisted that other forms of connection of the loops, such as physical or virtual collocation, would be inferior and less efficient.

Mr. Gushue also testified that the configuration outlined in the bona fide request is technically feasible and would utilize the same type of equipment that Ameritech Michigan already deploys in its network. Mr. Gushue explained that Ameritech Michigan currently uses Litespan 2000 technology in its loop network as part of its digital loop carrier system. He stated that Litespan 2000 technology has the capability of using the GR303 protocol to perform the concentration function needed by MCI. Indeed, Mr. Gushue maintained that the only real difference between the GR303 capability that MCI requested and the system currently utilized by Ameritech Michigan is the physical placement of the Litespan 2000 equipment. He indicated that Ameritech Michigan places the GR303 capable equipment in the field whereas MCI wants the equipment located in Ameritech Michigan's end-offices.

Finally, Mr. Gushue contended that Ameritech Michigan would not need to alter its existing network in order to accommodate MCI's bona fide request. He stated that MCI's request would not obligate Ameritech Michigan to make changes to any of its switches, digital loop carrier equipment, or outside plant environment. While conceding that Ameritech Michigan may need to develop certain new mechanical or electronic processing and administrative systems for the provision of the equipment requested by MCI, Mr. Gushue maintained that any administrative burdens encountered by Ameritech Michigan would be relatively insignificant. He noted that Ameritech Illinois had installed GR303 capable equipment for one end-user.

Ameritech Michigan

Scott J. Alexander, Ameritech Michigan's Senior Project Manager for Product Policy and Planning, described MCI's bona fide request as nonstandard and deficient. However, he conceded that these shortcomings were not critical to the formulation of Ameritech Michigan's response. Rather, he stressed that Ameritech Michigan denied the bona fide request primarily because Ameritech Michigan's network does not currently use digital loop carrier systems that support the GR303 protocol and because his company has no plans to deploy such equipment.

Mr. Alexander insisted that the bona fide request would require Ameritech Michigan to combine network elements (unbundled loops and unbundled interoffice transport) for MCI using equipment that is not currently used in Ameritech Michigan's network and that is not supported by Ameritech Michigan. Mr. Alexander acknowledged that Ameritech Illinois deployed GR303 capable equipment at the request of one of its customers. However, he insisted that the special circumstances surrounding that situation are clearly distinguishable from MCI's bona fide request. According to Mr. Alexander, the Illinois customer is the manufacturer of the digital loop carrier system and the customer specifically requested Ameritech Illinois to deploy GR303 capable equipment at the customer's premises. Mr. Alexander explained that the single customer application requires special training and manual administration and is unique within the entire region served by Ameritech Corporation.

Mr. Alexander contended that GR303 technology has not evolved to the point that it would be prudent for Ameritech Michigan to generally deploy that technology throughout its network. According to Mr. Alexander, the overall cost/benefit analysis of this technology has not been compelling. Further, he explained that at the time that MCI made its request, Ameritech Michigan's primary supplier of integrated digital loop technology, DCS Communications, did not have a GR303 compliant product generally available. Further, the general deployment of GR303 technology would require significant modifications to Ameritech Michigan's existing hardware and software and to its provisioning and administrative systems. In any event, Mr. Alexander thought it unlikely that Ameritech Michigan would ever deploy GR303 technology in the configuration requested by MCI. According to him, Ameritech Michigan would be more likely to deploy such equipment in the field two to three miles from its central offices. Further, he insisted that there is no reason for Ameritech Michigan to install GR303 capable equipment in its central offices for the exclusive use of another carrier.

Finally, Mr. Alexander insisted that contrary to MCI's contentions, colocation constitutes a viable alternative to MCI's bona fide request. Mr. Alexander testified that collocation would enable MCI to attain the same potential reduction of interoffice transport facilities and switching equipment that it seeks under the proposed bona fide request. Moreover, Mr. Alexander maintained that any cost savings or efficiencies gained by MCI would be due entirely to the shifting to Ameritech Michigan of the burden of acquiring and deploying GR303 capable equipment.

IV.

PROPOSAL FOR DECISION

The ALJ agreed with MCI that the definition of a network element contained in the interconnection agreement and in the FTA is broad enough to require Ameritech Michigan to provide direct interconnection with all capabilities of an element such as digital loop carrier equipment. The ALJ also found that the record supports MCI's claim that Ameritech Michigan's failure to provide access to digital loop carrier equipment, including all of its capabilities, improperly discriminates against MCI by depriving MCI of the opportunity to configure its network in a way that is functionally similar to Ameritech Michigan's network. Specifically, the ALJ concluded that Ameritech Michigan's refusal to grant MCI's bona fide request deprives MCI of the opportunity to optimize the use of interoffice transport. In making this determination, the ALJ acknowledged that although Ameritech Michigan would have to purchase certain additional software and hardware to make the digital loop carrier GR303 compatibility available to MCI, Ameritech Michigan would be compensated under the terms of the interconnection agreement for such purchases and any other expenses related to required administrative and technical support. Accordingly, the ALJ concluded that Ameritech Michigan must provide MCI with GR303 capability as a feature of a network element regardless of the fact that Ameritech Michigan does not currently use that capability.

The ALJ also found that although in Iowa Utilities Board, supra, the Eighth Circuit Court of Appeals rejected the notion that an incumbent local exchange carrier (ILEC) is required to provide its competitors with superior quality of access or network elements than available to the ILEC, Sections 305(1)(d) and (g) of the MTA lead to a different conclusion. According to the ALJ, Sections 305(1)(d) and (g) of the MTA prohibit Ameritech Michigan from impairing the efficiency of the lines used by other providers and from refusing to meet novel or specialized access requirements. Further, because the Commission ruled in its January 28, 1998 order in Case No. U-11280 that the Eighth Circuit Court of Appeals' decision in Iowa Utilities Board, supra, rejected only the FCC's interpretation of the FTA, the ALJ concluded that the Commission is not foreclosed from regulating access to an ILEC's system pursuant to the MTA in a manner that enhances local competition. Therefore, she found that even if GR303 capability constitutes superior service, due to Sections 305(1)(d) and (g) of the MTA, Ameritech Michigan cannot refuse to provide such capability to MCI.

The ALJ also rejected Ameritech Michigan's argument that it is under no legal obligation to honor MCI's bona fide request because it requires Ameritech Michigan to combine unbundled network elements. Ameritech Michigan's argument was based on the Eighth Circuit Court of Appeals' decision in the Iowa Utilities Board case. However, the ALJ concluded that the Commission has authority under the MTA to define network elements in such a way as to enhance competition. Further, relying on the Commission's orders in Case No. U-11280, the ALJ stated that the Commission has determined that it may require an ILEC to combine elements in certain circumstances so as to promote competition. The ALJ also noted that the interconnection agreement between Ameritech Michigan and MCI contemplates requests for combinations of elements. Accordingly, the ALJ stated that it would be reasonable to assume that MCI's bona fide request would enhance competition through efficient use of equipment.

Finally, the ALJ noted that the Commission has on two prior occasions determined that collocation was not the only means for a competing carrier to obtain access to unbundled elements. Citing the Commission's October 3, 1995 decision in Case No. U-10647 and its January 28, 1998 decision in Case No. U-11280, the ALJ expressed her belief that the Commission is cognizant of the barriers to competition raised by requiring access through collocation.

V.

DISCUSSION

Oral Argument

Upon filing its exceptions, Ameritech Michigan requests oral argument before the Commission. Rule 339(1) of the Commission's Rules of Practice and Procedure, as amended, 1992 AACS, R 460.17339(1), gives the Commission discretion to determine whether it will to hear oral argument. In deciding how to exercise this discretion, the Commission must determine whether a full hearing has occurred on the record, as required by the Administrative Procedures Act of 1969, 1969 PA 306, as amended, MCL 24.201 et seq.; MSA 3.560(101) et seq. (APA).

The APA requires that parties in a contested case be given an opportunity for a prompt hearing, an opportunity to present oral and written arguments on issues of law and policy, and an opportunity to present evidence and arguments on issues of fact. Further, the APA provides for the right to cross-examine witnesses and to submit rebuttal evidence. However, once the parties have been granted a full and impartial hearing in accordance with the full panoply of procedural safeguards guaranteed by the APA, a party does not have the right to demand oral argument before the Commission. Rochester Community Schools v State Board of Education, 104 Mich App 569; 305 NW2d 541 (1981).

The Commission finds that the record in this proceeding is sufficient for the Commission to issue an order without oral argument. To grant Ameritech Michigan's request for oral argument when the Commission has before it a full record of evidence, arguments, and exhibits received at the hearing is cumulative and unnecessary.

Bona Fide Request

Citing Section 9.1.3 of its interconnection agreement with MCI,[8] Ameritech Michigan maintains that because it does not deploy GR303 capable equipment anywhere in its network and does not design its network to use digital loop carriers in its central offices, MCI's bona fide request cannot be interpreted to involve a network element that is "available" within the meaning of the interconnection agreement. According to Ameritech Michigan, the word "available" in Section 9.1.3 of the interconnection agreement cannot be construed as meaning "technically feasible." Ameritech Michigan insists that if MCI's argument were accepted, then MCI could demand that Ameritech Michigan provide MCI with any and all technologies that are currently marketed without regard to whether Ameritech Michigan currently uses such technology in its

---

[8]Section 9.1.3 provides: "Ameritech shall be required to make available Network Elements only where such Network Elements, including facilities and software necessary to provide such Network Elements, are available. If Ameritech Michigan makes available Network Elements that require special construction, [MCImetro] shall pay to Ameritech any applicable special construction charges as determined in accordance with the Act. The Parties shall mutually agree on the nature and manner of any required special construction, the applicable charges thereto and the negotiated interval(s) that will apply to the provisioning of such Network Element(s) in lieu of the standard intervals set forth on **Schedule 9.10**." (Emphasis in original.)

network. Ameritech Michigan insists that, as used in Section 9.1.3 of the interconnection agreement, the word "available" means that the equipment or facilities must already exist in Ameritech Michigan's network. Indeed, Ameritech Michigan states that it cannot be required under Section 9.1.3 to unbundle what does not exist.

Ameritech Michigan also contends that Section 9.3.5.2 of the interconnection agreement[9] relates back to Section 9.1.3 and does not obligate Ameritech Michigan to fulfill a bona fide request for facilities or equipment that it does not already deploy in its network. Further, Ameritech Michigan insists that Section 9.6[10] of the interconnection agreement does not support MCI's position. According to Ameritech Michigan, Section 9.6 only states that a request for a network element combination or standard of quality that was not addressed under the terms of the agreement shall be made pursuant to the bona fide request process. Ameritech Michigan maintains that Section 9.6 agreed to a process, not a substantive right. Moreover, Ameritech Michigan argues that MCI agreed that a service or a network element that is subject to a bona fide request be provided only to the extent that it is "required to be provided by Ameritech pursuant to the Telecommunications Act of 1996." (See Schedule 2.2, Paragraph 5 of Exhibit R-14.) Therefore, Ameritech Michigan insists that if the right to request a network element or

---

[9]Section 9.3.5.2 provides that MCI may request Ameritech Michigan to provide "Unbundled Loop - Concentrators/Multiplexers" as a specific combination of Network Element.

[10]Section 9.6 provides: "Any request by [MCImetro] for access to a Network Element or a Combination or a standard of quality thereof that is not otherwise provided by the terms of this Agreement at the time of such request shall be made pursuant to a Bona Fide Request, as described **Schedule 2.2**, and shall be subject to the payment by [MCImetro] of all applicable costs in accordance with Section 252(d)(1) of the [FTA] to provide such Network Element or Combination or access." (Emphasis in original.)

combination is not found squarely within the interconnection agreement, then MCI has no basis for submitting a bona fide request for such network element or combination.[11]

Ameritech Michigan also asserts that the FTA does not obligate it to reconstruct its network to incorporate the custom design features of its competitors. Citing Sections 153(29) and (45) of the FTA and Paragraphs 249 and 261 of the FCC's First Report and Order, Ameritech Michigan maintains that a network element means a facility or equipment used in the provision of a telecommunication service that is provided by means of such facility or equipment. Accordingly, Ameritech Michigan insists that it has no obligation to offer a network element that it does not already use in its network.

Ameritech Michigan also argues that it is not required to combine existing, distinct unbundled network elements for MCI through use of GR303 capable equipment because these network elements are not currently combined in the manner requested by MCI in Ameritech Michigan's network. Ameritech Michigan asserts that MCI's bona fide request expressly acknowledges that it involves a new combination of network elements and that MCI expects Ameritech Michigan to do all of the work to combine these network elements. However, Ameritech Michigan insists that in the Iowa Utilities Board decision, the Eighth Circuit Court of Appeals recognized that the FTA makes a careful distinction between the provision of unbundled network elements in Section 251(c)(3) and the purchase of an ILEC's telecommunication retail service at wholesale rates pursuant to Section 251(c)(4). According to Ameritech Michigan, in

[11]Ameritech Michigan also contends that it has the right pursuant to Section 29.3 of the interconnection agreement to demand that the agreement be renegotiated to eliminate any provisions that were incorporated by the parties in reliance upon any provision of the [FTA] or the FCC's First Report and Order that was later revised or reversed by a legislative act or a regulatory or judicial decision.

making this distinction, the Eighth Circuit Court of Appeals specifically held that the FTA prohibits competitors from requiring an ILEC to combine network elements.

Ameritech Michigan states that Paragraph 9.3.4 of the interconnection agreement addresses four specific, predefined combinations. Pursuant to Paragraphs 9.3.5 and 9.3.6, all other combinations must be addressed through the bona fide request process. However, Ameritech Michigan stresses that these provisions were included in the interconnection agreement only because of 47 CFR 51.315(c-f), which were vacated by the Eighth Circuit Court of Appeals decision in Iowa Utilities Board, supra. Ameritech Michigan insists that the Eighth Circuit Court of Appeals vacation of 47 CFR 51.315(c-f) is a final and unappealable decision. Therefore, Ameritech Michigan contends that MCI cannot request combination of network elements that are not already combined in Ameritech Michigan's network.

Ameritech Michigan also argues that the Commission's January 28, 1998 order in Case No. U-11280 does not constitute precedent for granting the relief requested in MCI's complaint. Ameritech Michigan argues that Case No. U-11280 involves the question whether MCI could obtain shared or common transport in a combination of network elements or "platform," and did not reach the question of whether Ameritech Michigan could be forced to combine network elements in a manner that does not exist in its network.

Ameritech Michigan also argues that it is not required to provide MCI with superior quality service. In the Iowa Utilities Board decision, the Eighth Circuit Court of Appeals stated that the FTA did not require an ILEC to provide carriers with superior quality interconnection. The court rejected the FCC's requirement of superior service, reasoning that although ILECs may voluntarily agree to provide superior service and be compensated for it, the FTA only mandates that ILECs provide equal quality service. Because the portion of the Eighth Circuit Court of Appeals opinion regarding the elimination of the FCC's requirement of superior service was not the subject of the writ of *certiorari* issued by the United States Supreme Court, Ameritech Michigan insists that the vacation of 47 CFR 51.315(c-f) is final and nonappealable.

Ameritech Michigan also argues that the MTA only requires it to provide access to the unbundled elements of its existing network. Citing Section 355(1) of the MTA[12], Ameritech Michigan contends that unbundling only applies to its currently existing network and does not create an obligation to acquire novel equipment for the sole use of a competitor. Further, under the MTA, Ameritech Michigan insists that the Commission does not have general discretionary authority to compel Ameritech Michigan to purchase and install equipment in its network. Indeed, Ameritech Michigan stresses that even under the more pervasive rate of return regulation that existed prior to the adoption of the MTA, the Commission lacked authority to order Ameritech Michigan to purchase and install equipment for any purpose.

Ameritech Michigan insists that, contrary to the ALJ's findings, denial of the bona fide request was not an act of discrimination against MCI. According to Ameritech Michigan, MCI can use GR303 equipment the way it wants to through either virtual or physical collocation. Additionally, Ameritech Michigan asserts that MCI misled the Commission in claiming that Ameritech Michigan's network is functionally equivalent to the bona fide request.

Ameritech Michigan also asserts that Section 305 of the MTA, which prohibits discrimination, only precludes Ameritech Michigan from providing inferior service or connection to a

---

[12]Section 355(1) provides: "On or before January 1, 1996, a provider of basic local exchange service shall unbundle and separately price each basic local exchange service offered by the provider into the loop and port components and allow other providers to purchase such services on a nondiscriminatory basis."

competitor and cannot be construed to require Ameritech Michigan to provide MCI with superior service. Because Ameritech Michigan does not provision its network through use of GR303 technology, Ameritech Michigan insists that the ALJ wrongly concluded that denial of the bona fide request improperly deprived MCI of the opportunity to configure its network in a way that is functionally equivalent to Ameritech Michigan's network. Ameritech Michigan stresses that MCI is not requesting Ameritech Michigan's technology, which features the use of digital loop carrier systems using Technical Reference (TR) 08 or TR 57 protocols in it's the loop plant. Rather, Ameritech Michigan insists that MCI is demanding something that Ameritech Michigan does not provide to itself or to anyone else. Accordingly, Ameritech Michigan contends that the ALJ's finding of discrimination under Section 305 of the MTA has no factual support.

Ameritech Michigan also maintains that the ALJ improperly concluded that Ameritech Michigan's denial of the bona fide request violates Sections 305(1)(d)[13] and (g)[14] of the MTA. Ameritech Michigan insists that MCI can achieve its objectives through use of virtual collocation. It also maintains that MCI's witness, Mr. Gushue, provided absolutely no testimony regarding the cost, economics, or efficiencies of MCI's request. Given the circumstances, Ameritech Michigan contends that there is no support for a finding that Ameritech Michigan's denial of the bona fide request impaired MCI's access or use of its lines in any way.

---

[13]Section 305(1)(d) prohibits a provider of basic local exchange service from impairing the speed, quality, or efficiency of lines used by another provider.

[14]Section 305(1)(g) prohibits a provider of basic local exchange service from refusing or delaying access service or being unreasonable in connecting another provider to the local exchange whose product or service requires novel or specialized access service requirements.

Ameritech Michigan also argues that MCI's request was not denied by Ameritech Michigan in an attempt to thwart MCI's novel or specialized interconnection requirements. Ameritech Michigan asserts that this case involves a request for a new network element and does not involve an access or interconnection issue. Although acknowledging that GR303 technology is a recent development in digital loop carrier systems, Ameritech Michigan asserts that there is nothing novel or specialized about the technology of the interconnection or access involved in MCI's request. Indeed, Ameritech Michigan asserts that the only novelty presented by MCI's request is related to the requirement that Ameritech Michigan pay all upfront costs of acquiring new equipment that will be dedicated solely to MCI's use. Further, Ameritech Michigan insists that the ALJ read Sections 305(1)(d) and (g) far too broadly and that if the ALJ's ruling is allowed to stand, there will be no limits on what could be demanded by providers under the aegis of impairment of efficiency or novel or specialized access arrangements.

Ameritech Michigan also argues that the ALJ misunderstood MCI's request and its technical implications. Ameritech Michigan stresses that its existing equipment cannot be converted to GR303 capability for use in the manner described in MCI's bona fide request. Accordingly, Ameritech Michigan urges the Commission not to be misled by MCI's attempts to minimize the differences between Ameritech Michigan's existing equipment and the GR303 equipment specified in the bona fide request.

Ameritech Michigan also reiterates that MCI can use either virtual or physical collocation to achieve exactly the same results as it sought through the bona fide request. Moreover, Ameritech Michigan asserts that Section 356 of the MTA establishes virtual collocation as the primary method for interconnection between providers. Ameritech Michigan also states that its interconnection agreement with MCI provides for both virtual and physical collocation. Additionally, Ameritech Michigan stresses that MCI failed to present any evidence bearing on the cost effectiveness of collocation in comparison to the cost of its bona fide request. Indeed, Ameritech Michigan asserts that the cost of the bona fide request approach could well be higher than the cost of virtual collocation without gaining any additional efficiencies. According to Ameritech Michigan, the charges for virtual collocation would recover exactly the same kinds of costs for which MCI acknowledged it would bear responsibility under the arrangement contemplated in the bona fide request. Ameritech Michigan insists that the only substantial difference between the bona fide request and virtual collocation is that under the bona fide request approach Ameritech Michigan will be forced to buy the equipment for MCI and bear the upfront capital costs. Ameritech Michigan asserts that the real reason that MCI is arguing that the GR303 equipment is an unbundled network element can be traced to the advantage of the total service long run incremental cost (TSLRIC) pricing standard for network elements required by the MTA and MCI's desire to avoid paying the embedded costs associated with acquiring such equipment.

Ameritech Michigan also argues that nothing in the Commission's October 3, 1995 order in Case No. U-10647, which involved an interconnection arrangement between Ameritech Michigan and City Signal, Inc., (City Signal case) entitles MCI to force Ameritech Michigan to purchase and install new equipment dedicated solely to MCI's use. According to Ameritech Michigan, in the City Signal case, the issue was City Signal's desire to extend copper tie cables to City Signal's equipment location outside of Ameritech Michigan's central offices so that City Signal could connect its equipment to unbundled loops without the necessity of using collocation. Indeed, Ameritech Michigan stresses that the City Signal case is distinguishable because City Signal was responsible for payment of all costs of extending copper tie cables outside of Ameritech Michigan's central offices and City Signal performed the installation of its own equipment and combined the unbundled loops with its own transport. According to Ameritech Michigan, in the instant case, MCI requests that Ameritech Michigan pay all costs and do all the work associated with the bona fide request.

Ameritech Michigan also objects to the ALJ's comment that a copy of the Commission's order in this case should be placed in the docket of Case No. U-11104, which involves an investigation of Ameritech Michigan's application for interLATA relief. According to Ameritech Michigan, this proceeding involves nothing more than a dispute over the interpretation of a contract and the application of law. Accordingly, Ameritech Michigan argues that its exercise of its right to disagree cannot be interpreted as evidence of any kind of anticompetitive intent. Moreover, Ameritech Michigan argues that its position in this case in no way limited MCI's entry into the local exchange marketplace, precluded MCI's use of GR303 equipment, or prevented MCI from doing exactly what it requested in the bona fide request through use of collocation.

Finally, Ameritech Michigan insists that granting MCI's complaint would be contrary to public policy. According to Ameritech Michigan, this case simply constitutes MCI's attempts to force Ameritech Michigan to bear the costs of acquiring new equipment. Ameritech Michigan argues that it should not be forced to supply new equipment to MCI or to anyone else and that unbundling requirements should be limited to existing facilities and equipment. Ameritech Michigan draws a parallel to the "essential facilities" doctrine that has evolved in federal antitrust law. According to Ameritech Michigan, courts have recognized that when one firm in a competitive market controls a facility deemed essential for competition, that firm may be obligated to provide its competitors with access to the essential facility, if feasible, on terms that are reasonable and nondiscriminatory. However, Ameritech Michigan stresses that a facility that does not exist in its network can hardly be considered essential. Additionally, citing In Re Retail Wheeling Tariffs, 227 Mich App 442; __ NW2d__ 1998, Ameritech Michigan maintains the Michigan Court of Appeals implied that the unbundling of electric operations and transmission services relates to existing facilities, not to the purchase and installation of new equipment. Moreover, Ameritech Michigan insists that it is simply improper for its competitors to be allowed to use Ameritech Michigan's capital budget to avoid the legitimate costs of providing their portions of facilities-based basic local exchange service. Ameritech Michigan insists that if the PFD is allowed to stand, it could be forced by every competitor to include any technology, feature, functionality, or device that could conceivably be used to provide a telecommunications service without regard to whether Ameritech Michigan has any experience in using the equipment or any plans to ever use the equipment or its functionality as a part of its own basic bundled service offerings. According to Ameritech Michigan, the import of the PFD is that an ILEC will be required to purchase entirely new functionalities for each and every requesting carrier and to combine those functionalities in an endless variety of network elements, combinations, and platforms. Taking MCI's request to its logical extreme, Ameritech Michigan states that it could be forced to purchase a central office switch or similar equipment that would be dedicated to the exclusive use and control of the requesting carrier. Moreover, Ameritech Michigan contends that if a facilities-based provider were allowed to shift the burden of